



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

DEC 3 - 2003

400 Seventh St., S.W.
Washington, D.C. 20590

Ms. Laura MacPherson
Hazardous Waste Coordinator
Morris County Municipal Utilities Authority
P. O. Box 370
Mendham, NJ 07945-0370

Reference No.: 03-0242

Dear Ms. MacPherson:

This responds to your letter concerning the applicability of the new hazardous materials transportation security requirements adopted in a final rule issued under RSPA Docket (IIM-232). Your letter states that the Morris County Municipal Utilities Authority (MCMUA) accepts and stores for up to 90 days household hazardous waste and Conditionally Exempted Small Quantities Generator (CESQG) waste. In subsequent conversations with my staff, you stated that the wastes meet the definition of a flammable liquid in § 173.120 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), and are transported in quantities that require placarding of the transport vehicle. A contractor sorts and packages the waste, labels the containers, prepares the manifest, and ultimately, transports the waste to its own disposal facility; however, an employee of MCMUA signs the manifest.

Your questions are paraphrased and answered as follows:

Q1. Is MCMUA subject to the registration requirements under 49 CFR 107.606?

A1. The answer is no. Section 107.606 excepts an agency of a political subdivision of a State from the registration and fee requirements.

Q2. Must MCMUA develop and implement a security plan as an offeror of hazardous materials?

A2. The answer is yes. Each person, including a government agency or Indian tribe, who offers for transportation in commerce or transports in commerce one or more of the materials listed in §172.800(b)(1) through (7) must develop and adhere to a security plan for hazardous materials that conforms to the requirements in Subpart I of Part 172. When the offeror functions are performed by two or more entities, as in your case, the offerors may prepare a joint plan. Also in some cases, an offeror and a carrier may have a joint plan. The HMR provide the flexibility necessary to enable offerors and carriers to determine the best methods for addressing en route security issues.



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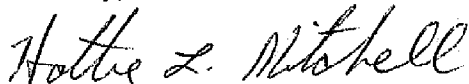
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Q3. Must MCMUA provide security training to its hazmat employees?

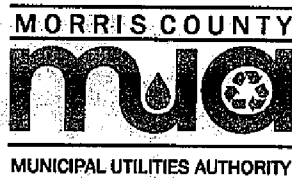
A3. The answer is yes. Each hazmat employee as defined in § 171.8 must, at a minimum, receive training that provides an awareness of security risks associated with hazardous materials transportation and methods designed to enhance transportation security. Additionally, each hazmat employee of a person required to have a security plan must be trained concerning the security plan and its implementation.

I trust this satisfies your inquiry.

Sincerely,

A handwritten signature in cursive script that reads "Hattie L. Mitchell". The signature is written in dark ink and is positioned above the typed name.

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards



Corbin
\$172,800
Security Plans
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September 17, 2003

Mr. Edward Mazzulo
Director, Office of Hazardous Materials Standards
Research and Special Programs Administration
U.S. Department of Transportation
DHM-10
400 Seventh Street S.W.
Washington, D.C. 20590-0001

Re: Applicability of New Subparts I and H in 49 CFR Part 172 to a
Household Hazardous Waste and CESQG Waste Facility
Located at a County Solid Waste Transfer Station

Dear Mr. Mazzulo:

On March 25, 2003, RSPA issued *HM-232 Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials* as a final rule. This rule created the new Subpart I in 49 CFR Part 172 and revised the hazardous materials training requirements in Subpart H of Part 172.

The Morris County Municipal Utilities Authority (MCMUA) would like clarification of the applicability of these new and revised regulations to its operation of a permanent household hazardous waste facility (HHW Facility) which it owns outright and operates along with a hazardous waste vendor (Onyx Environmental Services, LLC, of One Eden Lane, Flanders, New Jersey, 07836). Onyx Environmental Services is responsible for providing labor sufficient to unload participants' vehicles, sort and package the waste, label the containers, complete paperwork, including manifests, and transport the waste to its TSDF in Flanders. The MCMUA is billed for these labor, transportation and disposal services on a per diem, per pound basis.

By way of background information, HHW and conditionally-exempt small quantity generator (CESQG) waste is accepted at the MCMUA's HHW Facility, which is located on the site of its Mount Olive Transfer Station, 168 Gold Mine Road, Flanders, New Jersey. The HHW Facility is open only by appointment on certain Tuesday, Friday and Saturday mornings, while the Mount Olive Transfer Station operates as a fully permitted and licensed solid waste facility and operates six days a week.

CESQG waste and out-of-county residential HHW is accepted at the HHW Facility (with pre-authorization) for a small handling fee (\$1.25 per pound). In-county residents are not charged a

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fee to dispose of most HHW. All waste (including HHW) that exhibits a hazard characteristic is packaged according to its USDOT hazard class. The MCMUA may store HHW and CESQG waste on-site for up to ninety (90) days, after which time it is properly labeled, paperwork is filled out (manifests) and the waste is shipped off-site by Onyx Environmental Services to its own TSDF.

Although the MCMUA realizes that the waste it receives is not required to be manifested and transported by a hazardous waste transporter, for reasons that are explained below, it prefers to ship all HHW and CESQG wastes according to their respective DOT hazard classes, as if they were fully classified as RCRA hazardous wastes. Additionally, while the MCMUA chooses to ship the HHW and CESQG waste according to their respective DOT hazard classes, and the HHW Facility chooses to manage all wastes exhibiting a hazard characteristic as though they were RCRA hazardous wastes, which includes manifesting and placarding requirements, it is not required to do so. Thus, because the wastes do not meet any DOT criteria, the waste should not be subject to DOT regulations, regardless of the USEPA manifest exemption.

By way of background information on RCRA hazardous waste as it pertains to HHW and CESQG waste, household waste, including HHW, is exempt from federal hazardous waste regulations under RCRA Subtitle C. Therefore, HHW is not regulated under RCRA as a hazardous waste (see 40 CFR 261.4(b)(1)). Programs that collect HHW do not need a Subtitle C permit or EPA identification number, and HHW can be transported without following hazardous waste transportation regulations. No quantity of HHW nor length of time of accumulation triggers the Subtitle C requirements.

The household waste exemption applies to HHW through its entire management cycle. The waste collected through an HHW collection program does not lose its exemption by being consolidated with other household waste.

Like HHW, CESQG waste is exempt from most of the federal hazardous waste requirements. No Subtitle C permit nor EPA identification number is needed, and CESQG waste can be transported without following the federal hazardous waste transportation requirements.

In general, CESQGs must comply with two requirements. They do not store more than 1,000 kilograms (about 2,200 pounds) of hazardous waste at their facility at one time, and they send their hazardous waste to a recycling facility, a hazardous waste facility, or a facility permitted, licensed or registered by the state to manage municipal or industrial solid waste. These CESQGs may send their hazardous waste to HHW collection programs that are state-permitted, licensed or registered to manage municipal or industrial solid waste. Because CESQG waste is conditionally-exempt throughout its management cycle, collection programs



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managing CESQG waste are not covered by the federal hazardous waste regulations, but are subject to requirements imposed by states through their municipal or industrial waste permit, license or registration programs.

Although HHW and CESQG waste are exempt from most federal hazardous waste requirements, the EPA recommends that sponsors of HHW collection programs manage the collected waste as Subtitle C hazardous waste – that is, it should be managed at a recycling or licensed hazardous waste facility.

The EPA also recommends that HHW collection programs use licensed hazardous waste transporters who will properly identify, label, manifest and transport the collected wastes for recycling, treatment or disposal. Because of these recommendations, the MCMUA decided to subcontract the operation of its HHW Facility to a private vendor (currently, Onyx Environmental Services, LLC), in order to permit them to properly categorize and ship the waste.

My three questions to you are as follows:

1. Is the MCMUA required to register as an "offeror" of hazardous materials due to the fact that it manifests much of the HHW and CESQG waste that it accepts at its HHW Facility?

The USDOT regulations state:

Hazardous waste generators are subject to the registration requirement if they offer or transport hazardous wastes in the quantities that require registration. All hazardous wastes subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency are hazardous materials. In July 2000 the number of hazardous waste generators required to register significantly increased when the regulations were revised to require registration of all persons who offer or transport a quantity of hazardous materials that requires placarding (see 49 CFR Part 172, Subpart F, for placarding requirements).

Any person who performs any of the activities of an offeror, which include signing the shipping paper (hazardous waste manifest), for a quantity that requires placarding must register. Depending on the type of packaging (container) and the amount of waste being removed at one time, even generators of relatively small quantities of hazardous waste may be subject to the registration requirement.

A hazardous waste generator must register if it: offers or transports any amount of a waste other than Division 6.2 or Class 9 materials (which do not require placarding) in bulk packagings (for example, a cargo tank, a tank car, or a bulk transport vehicle); or offers or



transports any amount of a Division 6.2 or Class 9 material in bulk packagings with capacities equal to or greater than 3,500 gallons or 468 cubic feet; or offers or transports hazardous waste in other than bulk packagings (any container with a capacity of less than 119 gallons, for example, a 55 gallon drum) if a single shipment contains 1,000 pounds or more of one or more classes of hazardous waste that require placarding. Please note that it is the amount of material being removed from a site in non-bulk packagings at one time that triggers the registration requirement for the generator, not the amount of material that is contained in total on the truck, part of which may have been shipped by another hazardous waste generator.

According to 49 CFR 107.606,

(a) The following are excepted from the requirements of Subpart G (Registration of Persons Who Offer or Transport Hazardous Materials):

- (1) An agency of the Federal government.*
- (2) A State agency.*
- (3) **An agency of a political subdivision of a State.***
- (4) An employee of any of those agencies in paragraphs (a)(1) through (a)(3) of this section with respect to the employee's official duties.*
- (5) A hazmat employee (including, for purposes of this subpart, the owner-operator of a motor vehicle that transports in commerce hazardous materials, if that vehicle at the time of those activities is leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR Part 376 or an equivalent contractual agreement).*

The Morris County Municipal Utilities Authority should be excepted from the requirements of registering as a hazmat offeror as it is a county agency and, therefore, operates as an "agency of a political subdivision of a State."

Additionally, because the MCMUA actually performs no "offeror" or "transporter" functions, the "offeror" of the hazardous materials is the MCMUA's vendor, Onyx Environmental Services, with which the MCMUA subcontracts the labor required to operate the HHW Facility, in addition to packaging, labeling, transporting and recycling and/or disposing of the HHW and CESQG waste.

Lastly, although the MCMUA chooses to manifest the HHW and CESQG waste it receives at the HHW Facility, the wastes are not hazardous materials and are thus exempt under federal hazardous waste requirements and USDOT requirements, as they are "solid" wastes, not "hazardous" wastes, even though they may exhibit hazard characteristics.



2. Does the MCMUA need a security plan as an offeror of hazardous materials?

I understand that the answer to this question is based upon the registration criteria.

49 CFR Part 172.800 lists the seven types of hazardous materials/shipments that will require a security plan:

- (1) Highway route-controlled quantity of radioactive material.
- (2) More than 25 kg of Division 1.1, 1.2 or 1.3 explosives.
- (3) More than 1 L of a material poisonous by inhalation in hazard zone A.
- (4) Bulk packaging with a capacity of 13,248 L (3,550 gallons) or greater for liquids or gases, or more than 13.24 cubic meters (468 cubic feet) for solids.
- (5) A shipment of 2,268 kg (5,000 lbs.) in non-bulk packaging for which placards are required.
- (6) A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR Part 73.
- (7) A quantity of hazardous material that requires placarding.

Because neither HHW nor CESQG waste shipments from the HHW Facility "require" placarding, I believe that the MCMUA should be exempted from complying with the security plan requirements (please be advised that Onyx Environmental Services does have its own security plan, as it packages, labels, manifests and transports the waste directly to its own TSDF in Flanders, New Jersey).

In addition, the actual "offeror" and "transporter" of the waste is Onyx Environmental Services, who does have a security plan.

3. Does the MCMUA need to provide hazmat security training as an offeror of hazardous materials?

I have personally completed hazardous materials transportation training, which *does* include a security awareness training module; however, I have not received *in-depth* security training, which I would need to receive if the MCMUA was termed a "registered hazmat offeror."

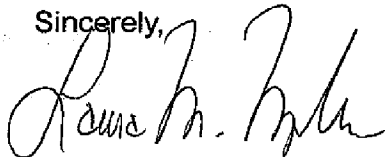


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Answers to all of the above questions appear to depend upon whether the MCMUA is actually an offeror of hazardous materials, which will depend, in turn, upon whether the waste materials that the MCMUA manages at its HHW Facility are deemed hazardous materials solely because they are manifested when shipped off-site, or are exempted from the federal hazardous waste requirements and USDOT regulations because they are HHW and CESGQ wastes (solid, not hazardous, wastes).

Thank you in advance for your responses to the above questions, as it is the MCMUA's intent to be in full compliance with all applicable regulatory requirements at all times.

Sincerely,



Laura M. Macpherson
Hazardous Waste Coordinator



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